

Prob 12B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**PETITION TO MODIFY THE CONDITIONS OR TERM OF SUPERVISION
WITH CONSENT OF THE OFFENDER**

(Probation Form 49, Waiver of Hearing, is on file)

Offender Name: Marcos Enrique GARCIA

Docket Number: 2:03CR00549-02

Offender Address: Stockton, California

Judicial Officer: Honorable Edward J. Garcia
Senior United States District Judge
Sacramento, California

Original Sentence Date: 06/10/2005

Original Offense: 21 USC 841, 846 - Conspiracy to Distribute and to Possess
With Intent to Distribute Cocaine Base, Cocaine, and
Methamphetamine (Count 1)
(CLASS A FELONY)
21 USC 841(a)(1) - Distribution of Cocaine Base (Count 2)
(CLASS A FELONY)
21 USC 841(a)(1) - Distribution of Cocaine Base (Count 3)
(CLASS B FELONY)
21 USC 841(a)(1) - Distribution of Cocaine Base (Count 4)
(CLASS A FELONY)
21 USC 841(a)(1) - Possession With Intent to Distribute
Cocaine Base (Count 5)
(CLASS A FELONY)
21 USC 841(a)(1) - Possession With Intent to Distribute
Methamphetamine (Count 6)
(CLASS B FELONY)

Original Sentence: 84 months custody Bureau of Prisons (concurrent on each
count); 60 months Supervised Release (concurrent on each
count); \$600 Special Assessment

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Special Conditions: 1) Submit to search; 2) Financial disclosure 3) Drug/alcohol treatment; 4) Drug/alcohol testing; 5) Co-payment for treatment/testing; 6) Drug offender registration; 7) DNA collection

Type of Supervision: Supervised Release

Supervision Commenced: 11/12/2008

Assistant U.S. Attorney: Richard J. Bender **Telephone:** (916) 554-2700

Defense Attorney: David R. LeBeouf **Telephone:** (209) 472-3440
(Retained)

Other Court Action:

05/13/2008: Order Regarding Motion for Sentence Reduction Pursuant to 18 USC 3582(e)(2) granted by the Court. Determined Guideline Range amended to Offense Level 31 with Criminal History Category I, resulting Guideline Range 108 to 135. Previously imposed sentence reduced to 67 months custody Bureau of Prisons (concurrent on each count), and all other provisions remain in full effect.

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PETITIONING THE COURT

To modify the conditions of supervision as follows:

8. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
9. The defendant shall complete 45 hours of unpaid community service as directed by the probation officer. The defendant shall pay fees attendant to participation and placement in this program on a sliding scale as determined by the program. .
10. The defendant shall be monitored for a period of 60 days, with location monitoring technology, which may include the use of radio frequency (RF) or Global Positioning System (GPS) devices, at the discretion of the probation officer. The defendant shall abide by all technology requirements and shall pay all or part of the costs of participation in the location monitoring program, as determined by the probation officer.

Justification: Mr. Garcia commenced supervision in a relationship, caring for his child, and was gainfully employed. He maintained his household by renting a guest house on his parents' property. He communicated with the probation office on a regular basis.

In June 2011, Mr. Garcia reported his relationship with his wife was strained as she was embarrassed of him and bored with their relationship. He stated he was initially depressed, but he realized his life was not over as he had his son. He had an important reason for his staying focused and free. He declined the probation officer's request for his participation in counseling.

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During a traffic stop on August 20, 2011, Mr. Garcia was found to have been operating a vehicle following his consumption of alcohol. He was arrested for a violation of California Vehicle Code Section 23152 (A) - Driving Under the Influence. In response to this law enforcement contact and alcohol charge, his supervision was increased, he was placed in the federal substance abuse treatment program to address his alcohol abuse, and he was directed to participate in Alcohol Anonymous meetings. Additionally, Mr. Garcia had agreed to a modification of his terms of supervision to include community service and alcohol abstention.

As this matter was pending, on October 14, 2011, Mr. Garcia was again stopped for traffic law violations, and was found to have been operating his vehicle after the consumption of alcohol. Mr. Garcia admitted his consumption of alcohol while socializing with his employer and coworkers. He stated a coworker was to drive him home. However, as they were leaving the bar and grill, two unknown Hispanic males approached him and made threatening statements. The individuals stated they recognized Mr. Garcia from the past, and attempted to escalate the encounter. His employer confirmed this encounter. He also added that instead of driving Mr. Garcia home, they panicked and directed Mr. Garcia to his vehicle so he could immediately leave the scene.

While pending resolution of the two matters, Mr. Garcia placed himself in the San Joaquin County Scram Bracelet monitoring program through Alcohol Sensor. According to the program representative, Mr. Garcia adhered to the conditions of the program, and remained alcohol free.

On December 13, 2011, Mr. Garcia pled guilty to Driving Under the Influence of Alcohol in Sacramento County Superior Court under case number ST057768A and case number ST058127A. He was sentenced to 2 days jail and participation in a 18 -month multi-offender alcohol program.

In further response to these offenses, Mr. Garcia has agreed to the above conditions and signed a Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, which is on file. These additional conditions in addition to the county imposed sanctions including treatment are considered sufficient to address his non-compliance. Additionally,

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these conditions will operate as tools to monitor his adjustment under supervision. Should he continue in his use of alcohol, a more serious sanction will be appropriate and recommended.

Respectfully submitted,

/s/ George A. Vidales
GEORGE A. VIDALES
Senior United States Probation Officer
Telephone: (916) 683-3324

DATED: April 5, 2012
Elk Grove, California
GAV/cj

REVIEWED BY: /s/ Michael A. Sipe
MICHAEL A. SIPE
Supervising United States Probation Officer

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THE COURT ORDERS:

- (X) Modification approved as recommended.
- () Modification not approved at this time. Probation Officer to contact Court.
- () Other:

4/10/2012

Date

/s/ Edward J. Garcia

Signature of Judicial Officer

cc: United States Probation
Richard J. Bender, Assistant United States Attorney
David R. LeBeouf, Defense Counsel (Retained)
5250 Claremont Avenue, Suite 245
Stockton, California 95207
Defendant
Court File